

Title 5

BUSINESS LICENSES AND REGULATIONS

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CABLE COMMUNICATIONS FRANCHISE

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Article I. Purpose

5.10.10 Title.

The title of this chapter shall be the Lewis County cable communications franchise chapter. [Ord. 1157, 1998; Ord. 1118 Art. I § 1.01, 1993]

5.10.20 Purpose.

The purpose of the chapter is to establish procedures and set standards for the granting and renewal of cable communications system franchises within the unincorporated areas of Lewis County. [Ord. 1157, 1998; Ord. 1118 Art. I § 1.02, 1993]

Article II. Definitions

5.10.030 Basic cable service.

“Basic cable service” means any service tier which includes the retransmission of local television broadcast signals. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.01, 1993]

5.10.035 Board.

“Board” means the board of county commissioners of Lewis County, state of Washington. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.02, 1993]

5.10.040 Cable channel.

“Cable channel” means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation). [Ord. 1157, 1998; Ord. 1118 Art. II § 2.03, 1993]

5.10.045 Cable operator.

“Cable operator” means any person or group of persons:

(1) Who provides cable service over a cable system and directly through one or more affiliates owns a significant interest in such cable system; or

(2) Who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.04, 1993]

5.10.050 Cable service.

“Cable service” means:

(1) The one-way transmission to subscribers of:

(a) Video programming;

(b) Other programming service; and

(2) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.05, 1993]

5.10.055 Cable system.

“Cable system” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

(1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(2) A facility that serves subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way;

(3) A facility of a common carrier which is subject in whole or in part, to the provisions of Title II of the Cable Communications Act of 1984, Public Law 98-549, except that such facility shall be considered a cable system (other than for purposes of public, educational, or governmental use) to the extent such facility is used in the transmission of video programming directly to subscribers; or

(4) Any facilities of any electrical utility used solely for operating its electrical utility systems. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.06, 1993]

5.10.060 Certificate of compliance.

“Certificate of compliance” means that approval or authorization required by the FCC in order for a grantee of a cable

communications system franchise to begin and continue operation within the county. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.07, 1993]

5.10.065 County.

“County” means Lewis County, state of Washington. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.08, 1993]

5.10.070 FCC.

“FCC” means the Federal Communications Commission or any succeeding agency performing similar regulatory functions. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.09, 1993]

5.10.075 Franchise.

“Franchise” means an initial authorization, or renewal thereof, issued by the county as the franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.10, 1993]

5.10.080 Grantee.

“Grantee” means the cable operator to whom the franchise is granted and its lawful successors and assigns in accordance with the provisions of its franchise. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.11, 1993]

5.10.085 Gross annual receipts.

“Gross annual receipts” means any revenue received by the grantee from the operation of the cable system in the service area, including basic and pay services, pay-per-view revenue, advertising and installation revenue; provided, however, that such phrase shall not include:

(1) Revenues received from any national advertising carried on the cable system;

(2) Any fees or taxes on cable service which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the grantee on behalf of such governmental unit or agency. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.12, 1993]

5.10.090 Local channels.

“Local channels” means over the air any television broadcast channel transmitted within the area of federal regulation. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.13, 1993]

5.10.095 Other programming service.

“Other programming service” means information that a cable operator makes available to all subscribers generally. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.14, 1993]

5.10.100 Person.

“Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.15, 1993]

5.10.105 Property of grantee.

“Property of grantee” means all property owned, installed, or used within unincorporated Lewis County by a grantee in the conduct of a cable system business under the authority of a franchise granted by the board. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.16, 1993]

5.10.110 Public educational or governmental access facilities.

“Public, educational, or governmental access facilities” means:

(1) Channel capacity designated for public, educational, or governmental use; and

(2) Facilities and equipment for the use of such channel capacity. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.17, 1993]

5.10.115 Road.

“Road” means the surface, air space above the surface, and the area below the surface of any public road, other public right-of-way or public place, including public utility easements. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.18, 1993]

5.10.120 Service area.

“Service area” means the present county boundaries of the franchise authority, and shall include any additions thereto by annexation or other legal means, but shall not include any areas annexed by municipalities. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.19, 1993]

5.10.125 Service tier.

“Service tier” means a category or cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.20, 1993]

5.10.130 Subscriber.

“Subscriber” means any person receiving for any purpose thereof any service provided by a cable system operating under a franchise granted by the board. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.21, 1993]

5.10.135 Video programming.

“Video programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station. [Ord. 1157, 1998; Ord. 1118 Art. II § 2.22, 1993]

Article III. Applications for Franchise

5.10.140 Persons who may make applications for franchise.

An application to the board for a franchise to use the rights-of-way of county

roads for the construction and maintenance of a cable communications system in an unincorporated part or parts of Lewis County:

(1) May be made by any person or private or municipal corporation; or

(2) The board may, by advertisement or any other means, solicit and call for applications for cable communications system franchises, and may determine and fix any date upon which it must be received by, and may make any other determinations and specify any other times, terms, conditions, or limitations with respect to soliciting, making and receiving these applications;

(3) Application by a person, private or municipal corporation and in subsection (1) of this section shall not preclude advertisement by the board as in subsection (2) of this section for a franchise in the same area or areas. [Ord. 1157, 1998; Ord. 1118 Art. III § 3.01, 1993]

5.10.150 Required contents of application for franchise.

Each application for a franchise to construct, operate, or maintain any cable communications system within the county shall be filed with the Lewis County auditor and shall contain or be accompanied by the following:

(1) The name, address, and telephone number of the applicant.

(2) A detailed statement identifying the corporate or other business entity organization of the application including the following:

(a) The names and address of all officers, directors, associates, owners, and persons being entitled to have or control 20 percent or more share of the individual, business, company, or corporation so identified in the application.

(b) The names and addresses of any parent or subsidiary of the applicant, namely

any other business entity owning or controlling the applicant in whole or in part and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to cable communication systems owned or controlled by the applicant, its parent or subsidiary and the areas served thereby.

(c) A detailed and complete financial statement of the applicant, prepared by an audit service or the business itself, certifying that the applicant has available sufficient, uncommitted resources, or a letter in writing from a recognized lending institution or funding source, addressed to the board, setting forth a clear statement of its intent to provide whatever capital is necessary to construct and operate the proposed system in the county.

(d) A statement identifying other places and dates of communications system franchise(s) awarded to the applicant, its parent or subsidiary and the status of each of the franchise(s). [Ord. 1157, 1998; Ord. 1118 Art. III § 3.02, 1993]

5.10.160 Description of proposed plan of operation.

A detailed description of the proposed plan of operation of the applicant shall be submitted which shall include the following:

(1) A detailed map indicating all areas proposed to be served and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served.

(2) A statement of schedule setting forth all proposed classifications of rates and charges to be made to subscribers in each classification, including installation charges and service charges.

(3) A statement of the particular channels and service tiers to be provided for subscribers.

(4) The estimated number of potential subscribers and households for applications

for new franchises or the number of current subscribers for applications for franchise renewals.

(5) A detailed, informative, and referenced statement describing the actual equipment and channel capacity proposed by the applicant.

(6) A copy of the form of agreement, instrument, or other writing proposed to be used between the applicant and any subscriber.

(7) A copy of any and all agreements, written or oral, existing or proposed to exist between the applicant and any person, firm, or corporation which materially relate or pertain to or depend upon the application and the granting of the franchise which the applicant feels are appropriate for consideration by the board. [Ord. 1157, 1998; Ord. 1118 Art. III § 3.03, 1993]

5.10.170 Review of applications for franchise.

Upon receipt of any application for franchise, the board shall refer the application to the Lewis County auditor and the director of the Lewis County department of public services or his designated representative, who shall prepare a report and recommendation of that application to the board for consideration. Said reports shall be submitted to the board within 90 days of the filing of the application for franchise. The review process for franchise renewal shall be done in accordance with the procedures set forth in the Cable Communications Policy Act of 1984 (P.L. 98-549), 47 U.S.C. 521-611, as now or hereafter amended. [Ord. 1157, 1998; Ord. 1118 Art. III § 3.04, 1993]

Article IV. Determinations Regarding Franchise Applications

5.10.180 Criteria considered in determinations regarding applications for franchise.

In making any determination with respect to an application for franchise or franchise renewal, the board shall consider the following:

(1) Applications for new franchises:

(a) The number of channels to be provided;

(b) The rates to be charged to subscribers;

(c) Income to the county;

(d) The experience, character, background, and financial responsibility of the applicant and owners;

(e) The management and technical expertise of the proposed cable operator;

(f) The willingness and ability to meet construction and physical requirements;

(g) Any other considerations which may safeguard the interests of the county and the public including, but not limited to the retransmission of local channels.

(2) Applications for franchise renewal:

(a) Whether the cable operator has substantially complied with the material terms of the existing franchise and with applicable law.

(b) Whether the quality of the cable operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality, or level of cable services or other services provided over the cable system, has been reasonable in light of community needs.

(c) Whether the cable operator has the financial, legal, and technical ability to provide services, facilities, and equipment as set forth in the cable operator's proposal.

(d) Whether the cable operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests. [Ord. 1157, 1998; Ord. 1118 Art. IV § 4.01, 1993]

5.10.190 Board procedure in consideration of applications.

If, after considering the reports of the auditor and public services department, the board shall determine to further consider the application, the following shall be done:

(1) Applications for New Franchises.

(a) The board shall decide and specify the terms and conditions of any franchise to be granted hereunder and as herein provided.

(b) The board shall pass a resolution of intent to grant such franchise, giving notice of receipt of the application, describing the prescribed boundaries of the franchise desired, stating the name of the proposed grantee, the terms and conditions upon which the franchise will be granted, fixing and setting forth the day, hour and place of a public hearing where any person having any interest therein or objections thereto may appear and be heard. Copies of the proposed franchise shall be available at the county auditor's office.

(c) The county auditor shall give public notice by the prescribed county public notice procedure of Chapter 36.55 RCW.

(2) Applications for Franchise Renewal. Applications for the renewal of existing cable system franchises shall use that procedure set forth in Section 626 (47 U.S.C. 546) of the Cable Communications Act of 1984, as now or hereafter amended. [Ord. 1157, 1998; Ord. 1118 Art. IV § 4.02, 1993]

5.10.200 Granting/denial of franchise applications.

(1) At the public hearing to consider the approval of the franchise application the board shall make one of the following determinations:

(a) That the franchise application be denied; or

(b) That the franchise application be granted upon the terms and conditions specified in the resolution of intent; or

(c) That such franchise application be granted, but upon the terms and conditions specified on the date of the public hearing.

(2) If the board shall determine that the franchise application be denied, or be granted upon the terms and conditions specified in the resolution of intent, or be granted upon the terms and conditions specified by the board on the date of the public hearing, such determination shall be expressed by resolution and shall be final and conclusive.

(3) The board shall cause to be recorded with the county auditor a complete record of all existing franchises upon county roads and all newly granted franchises resulting under this chapter including the terms, conditions, and expiration date, shall be recorded and maintained as a current record. [Ord. 1157, 1998; Ord. 1118 Art. IV § 4.03, 1993]

Article V. County Requirements of All Cable System Franchises

5.10.210 Length of franchises.

The county shall grant no franchise for the construction, operation, and maintenance of a cable system for a period of longer than 15 years. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.01, 1993]

5.10.220 Franchise fees.

Grantees of franchises, as payment to the county for the right and privilege of engaging in a cable communications system business in the county and using public roads, shall pay an annual franchise fee equal to five percent of a grantee's gross annual revenues as defined in LCC 5.10.085. Said fee limit shall be for any 12-month period under the franchise for accounting purposes. Payments of franchise fees shall be made quarterly within 45 days after the last day of the quarters as specified in the individual franchises. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.02, 1993]

5.10.230 Grants of nonexclusive authority.

The board shall not grant any exclusive franchise or privilege in any cable system franchise. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.03, 1993]

5.10.240 Public educational or governmental access facilities.

The county reserves the right to condition any franchise with respect to the designation or use of channel capacity for public, educational, or governmental use pursuant to the provisions of Section 6.11 (47 U.S.C. 531) of the Cable Communications Act of 1984. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.04, 1993]

5.10.250 Service extension policy.

The following shall be the cable system service extension policy for franchises granted by the board:

(1) The cable system, as constructed as of the date of the passage and final adoption of the ordinance codified in this chapter, substantially complies with the material provisions hereof. The grantee shall hereby be authorized to extend the cable system as necessary, or as required pursuant to the terms hereof within the service area.

Whenever the grantee shall receive firm orders for service from at least eight subscribers within 1,320 aerial cable-bearing strand feet (one-quarter mile) of its trunk or distribution cable, it shall extend its cable system to such subscribers at no cost to said subscribers for system extension, other than the usual connection fee for all subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the cable system, or as provided for under subsection (2) in this section.

(2) No subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a request to locate his/her cable drop underground, existing of more than 150 feet of distance from distribution cable to connection of service to subscriber, or areas requiring the undergrounding of its trunk or distribution cables with density of less than 16 subscribers within 1,320 cable-bearing trench feet (one-quarter mile) of its trunk or distribution cable, or a density of less than eight subscribers per 1,320 cable-bearing strand feet of trunk or distribution cable, cable service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the grantee and subscribers in the area in which cable service may be expanded, the grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential subscribers per 1,320 cable-bearing strand feet of its trunk or distribution cable, and whose denominator equals eight subscribers for aerial, or 16 subscribers for underground. Potential subscribers will bear the remainder of the

construction and other cost on a pro rata basis. The grantee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance.

(3) In new subdivisions, if the developer agrees to pay a negotiated deposit not to exceed the cost of trench and cable plant, the grantee shall make cable service available from the date of final plat approval.

(4) At the same time utilities are being installed in new subdivisions or underground in other areas of the county where overhead lines are used by the cable system, the grantee, in cooperation with the other utility companies or developer, shall install cable lines.

(5) The deposit required by subsection (3) in this section may be waived if a development plan approved by the county demonstrates eight subscribers per 1,320 cable-bearing strand feet, or 16 subscribers per 1,320 cable-bearing trench feet are planned as described in subsection (1), or subsection (2), in which event service shall be made available when the development or density reaches 10 percent. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.05, 1993]

5.10.260 System signal standards.

The grantee of any franchise granted pursuant to this chapter shall comply with all standards, specifications, and requirements set forth in Part 76 of Chapter I of Title 47 of the Code of Federal Regulations concerning signal quality and equipment or facilities affecting signal quality as those standards, specifications, and requirements now exist or as they may be amended during the term of that franchise. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.06, 1993]

5.10.270 Customer service standards.

(1) Grantees shall observe customer service standards that are consistent with

federal customer service standards as now or hereafter amended.

(2) Grantees shall also maintain telephone customer service on a 24-hour basis, with customer service representatives (CSR) available at least during normal business hours, which for the purposes of this chapter are 8:00 a.m. through 5:00 p.m. The telephone customer service shall have a Lewis County telephone number or, as an alternative, the grantee may maintain a local business office. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.07, 1993]

5.10.280 Conditions of right-of-way occupancy.

(1) A grantee shall use its own existing poles or existing poles erected and maintained by electrical power and telephone utilities whenever practicable (including the right to refuse to agree with such companies if the attachment rates are not reasonable) and whenever agreements with said companies so permit.

(2) All transmission and distribution structures, lines, and equipment erected by the grantee within the county shall be so located as to cause minimum interference with the proper use of county roads and to cause minimum interference with the rights and reasonable convenience of property owners who join and of the public utility easements and public ways and places.

(3) In the case of disturbance of any road, sidewalk, alley, public way, or paved area, a grantee shall, at its own expense and in a manner approved by the county, replace and restore such road, sidewalk, alley, public way or paved area in as good a condition as before the work was done. Said work shall be completed within 30 days of disturbance unless granted additional time by the subdivision and utility inspector of the Lewis County department of public services - public works division.

(4) If at any time during the term of a franchise the county shall lawfully elect to alter or change the grade of any road, sidewalk, alley or other public way, or construct or relocate any public improvement, a grantee, upon reasonable notice by the county, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

(5) A grantee shall, upon 48 hours' advance written request of any person holding a permit issued by the county, temporarily raise or lower its wires to permit the moving of buildings or equipment. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and a grantee shall have the authority to require such payment in advance.

(6) A grantee shall have the authority to trim trees upon and overhanging roads, alleys, sidewalks, and public ways and places of the county so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee, except that at the option of the county, such trimming may be done by it or under its supervision and direction at the expense of the grantee.

(7) In all areas of the county where the cables, wires, or other like facilities of public utilities are placed underground, a grantee shall place its cables, wires, or other like facilities underground.

(8) Copies of all agreements for joint use of poles and facilities with other utilities shall upon request of the board or their designated representative be filed with the county.

(9) A grantee shall, at its sole cost and expense, cooperate with electrical power or telephone utilities in the relocation of cables, wires, and other like facilities underground at the time said telephone or electrical power utilities shall relocate their

cables, wires, or other facilities underground.

(10) A grantee shall at all times while working on county roads comply with the "Manual on Uniform Traffic Control Devices" and the "Department of Labor and Industries Regulations," for preventing failures, traffic control, and accidents which are likely to cause damage, injuries, or nuisances to the public. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.08, 1993]

5.10.290 Transfer of franchise.

The grantee's right, title, or interest in the franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an affiliate, without the prior approval of the board by ordinance, which such approval shall not be unreasonably withheld. No such approval shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of rights, title, or interest of the grantee in the franchise or cable system in order to secure indebtedness. All transfers of ownership shall be subject to the provision of the Cable Television Consumer Protection and Competition Act of 1992 as now or hereafter amended. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.09, 1993]

5.10.300 Liability and indemnification.

(1) A grantee shall indemnify and hold harmless the county, its officers, commission, agents providing contract services, and employees against and from any and all claims, demands, causes of action, actions, suits, proceedings, damages, costs or liabilities of every kind and nature whatsoever. This includes, but shall not be limited to, an action challenging the validity of a franchise granted by the board pursuant to this chapter, damages to county property, damages arising out of copyright infringements, damages arising out of any failure by a grantee to secure consents from

the owners, authorized distributors or licensees of programs to be delivered by a grantee's cable system, damages arising out of the installation, operation or maintenance of a cable system, damages for injury or death, damages to person or property, regardless of the merit of the same and whether or not any act or omission complained of is authorized, allowed or prohibited by a franchise, together with reasonable attorney fees, litigation expenses and court costs.

(2) A grantee shall pay all necessary and reasonable expenses incurred by the county in tendering to a grantee its defense against all claims, damages, penalties, costs or liabilities mentioned in subsection (1) above including, but not limited to, reasonable attorney fees.

(3) A grantee shall maintain liability insurance throughout the term of its franchise, or any extension thereof, insuring the county and the grantee against all damages mentioned in subsection (1) above and in the minimum amounts of:

(a) General comprehensive liability insurance in the amount of \$1,000,000.

(b) Property damage liability insurance in an amount not less than \$25,000 resulting from any one occurrence.

(c) Bodily injury liability insurance in an amount not less than \$500,000 resulting from bodily injury or death to any one person.

In lieu of the property damage liability insurance and bodily injury liability insurance required above, a grantee may provide a combined single-limit policy for bodily injury and property damage of not less than \$500,000.

(4) A grantee shall furnish proof to the county of the acquisition of insurance as required herein by filing with the county auditor a copy of the insurance policy, or a certificate prepared on a Lewis County form, which shall be subject to the approval

as to form of the Lewis County prosecuting attorney.

(5) The county and its elected and appointed officers and employees shall be named as an additional insured and shall receive a 30-day period written "notice of cancellation" should the insurance policy be terminated. Where such insurance is provided by a policy which also covers the grantee, or any other entity or person, it shall contain the standard cross-liability endorsement. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.10, 1993]

5.10.310 Rights reserved to county.

(1) There is hereby reserved to the county every right and power which is required to be herein reserved or provided by any law, and a grantee, by its acceptance of a franchise granted by the board pursuant to this chapter, shall agree to be bound thereby and to comply with any action or requirements of the county in its exercise of such rights or power heretofore or hereafter enacted or established. The reservation herein includes the right of the board to adopt, in addition to the provisions contained herein or in any individual franchise as in existing applicable ordinances, such regulations as it shall find necessary in the exercise of its police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights granted in any franchise.

(2) Neither the granting of any franchise nor any provision thereof shall constitute a waiver or bar to the exercise of any governmental right or power of the county. This shall specifically include the right of county, as now or hereafter authorized by statute, to regulate rates to the extent permitted by federal law.

(3) The board may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter and, to

the extent authorized by federal or state laws, rules and regulations, county ordinances or a franchise issued pursuant to this chapter, may determine any question of fact which may arise during the existence of such franchise. The board reserves the authority to adjust, settle, or compromise any controversy or charge arising from the operations of a grantee hereunder, either on the behalf of the county, the grantee or any subscriber, in the best interest of the public.

(4) The county shall have the right to make reasonable inspections of books, records, maps, plans, financial statements and other like materials of a grantee relating to the cable system, its rates, equipment and service record at any time during normal business hours for the purpose of verifying compliance with the provisions of a franchise; provided, that all such materials shall be kept confidential by the county and not disclosed to other parties without the advance written consent of the grantee. This shall specifically include the right of the county to conduct technical and fiscal audits of the grantee and its cable system.

(5) At the expiration of the term for which a franchise is granted or any renewal thereof, or upon its termination as provided for herein, a grantee shall remove at its own expense all portions of the system from county roads. In the event a grantee abandons the system, as defined in LCC 5.10.350(1)(e), the county shall have the right to remove all portions of a grantee's system from the county and to charge the grantee with the reasonable costs thereof.

(6) Nothing contained in any franchise granted pursuant to this chapter shall be construed to contract away or to modify or abridge the county's right of eminent domain.

(7) No acceptance of any payment of a franchise fee shall be construed as a release or an accord and satisfaction of any claim the county may have for further or

additional sums payable under this chapter or for the performance of any other obligation hereunder. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.11, 1993]

5.10.320 Maps and reports.

(1) Submission of Maps. A grantee shall upon request of the county file with the county true and accurate maps of all existing and proposed installations.

(2) Submission of Annual Reports. A grantee shall submit to the county on or before April 1st of each year, an annual report for the year ending the previous December 31st, signed by the president, vice president, treasurer, or general manager of the grantee, which shall show the number of subscribers and the subscriber revenues for each of the existing rate classifications.

(3) Other Information. A grantee shall submit such other reasonable information as the board shall request with respect to the grantee's financial condition, properties and expenses and to the grantee's performance of its franchise obligations. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.12, 1993]

5.10.330 Rates and charges.

Except as otherwise provided by federal law, rates shall at all times be fair, just and equitable. Rate increases for regular subscriber service shall be maintained consistent with additional services provided (including without limitation additional broadcast carriage) and increases in capital and operating costs (including without limitation increased costs due to inflation). The board shall receive notice of any proposed rate change 30 days prior to its effective date to permit the board to review any such change. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.13, 1993]

5.10.340 Acceptance of franchises.

(1) Execution of a franchise by a grantee where indicated on the franchise document

shall be deemed acceptance of such franchise as of the date of its passage by the board.

(2) Should a grantee fail to execute a franchise pursuant to subsection (1) above, said grantee shall acquire no rights, privileges, or authority whatsoever under this chapter or such franchise.

(3) The acceptance of a franchise granted under this chapter shall be deemed to constitute surrender by the grantee seeking renewal of a franchise of any right to operate the cable system in the county under or by virtue of any previous franchise granted by the board. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.14, 1993]

5.10.350 Termination of franchise.

(1) In addition to all other rights and powers pertaining to the county by virtue of this chapter or otherwise, the county reserves the right to terminate by ordinance any franchise and all rights and privileges of a grantee thereunder in the event a grantee:

(a) Willfully fails, refuses, or neglects to do, or comply with any material requirement or limitation contained in this chapter or any franchise granted pursuant to this chapter, or of any material rule or regulation of the board adopted pursuant hereto, and the grantee has failed, after 60 days' notice in writing by certified mail, return receipt requested, to it by the county to take steps to remedy such failure, refusal, or neglect to do or comply with such requirements;

(b) Becomes insolvent, unable or unwilling to pay its debts, whether or not a receiver is appointed, or voluntarily or involuntarily becomes a bankruptcy debtor;

(c) Attempts to transfer or assign any right or obligation under a franchise contrary to the terms of LCC 5.10.300;

(d) Fails to disclose or misrepresents a material fact required under the terms of

this chapter or any franchise granted hereunder;

(e) Abandons the cable system by failing to take steps reasonably necessary to reestablish cable system transmissions to its subscribers within 10 business days after receipt of notice from the county, or by failing within 60 days following the termination of a franchise to remove all portions of the system from county roads; or

(f) Allows or suffers a foreclosure or other judicial sales of all or a substantial part of the system; providing that no termination shall result if the failure is due to causes beyond the reasonable control of a grantee.

(2) Such termination shall be by ordinance duly adopted after 30 days' notice to the grantee, which notice may run concurrently with the 60-day notice required in LCC 5.10.350(1)(a) above, and shall in no way affect any of the county's rights under this chapter or any franchise granted hereunder or any provision of law; provided, before a franchise may be terminated under this section, a grantee must be provided with an opportunity to be heard before the board. [Ord. 1157, 1998; Ord. 1118 Art. V § 5.15, 1993]

5.10.360 Additional franchise provisions.

(1) A grantee shall have no recourse whatsoever against the county for any loss, cost, expense, or damage arising out of any provision or requirement of this chapter or any franchise granted pursuant hereto because of its enforcement.

(2) Any right or power in, or duty impressed upon, any officer, employee, or department of the county shall be subject to transfer by the county to any other officer, employee, or department of the county.

(3) A grantee shall not be relieved of its obligation to comply promptly with any of the provisions of this chapter or any

franchise granted hereunder by failure of the county to enforce prompt compliance.

(4) A grantee shall be subject to all requirements of county laws, rules, regulations, and specifications heretofore or hereafter enacted or established.

(5) A grantee shall not be relieved of any obligations involved in obtaining pole or conduit space from any electrical or telephone utility or from others maintaining utilities on streets or roads.

(6) Any franchise granted pursuant to this chapter shall authorize and permit the grantee to solicit, sell, distribute, and make a charge to subscribers within the county for connection to the cable system of the grantee, and shall authorize and permit the grantee to traverse any portion of the county to provide service in areas other than the unincorporated area of Lewis County.

(7) A franchise granted hereunder shall not be given any value by any court or other authority, public or private, in any proceeding of eminent domain, wherein or whereby the county shall be a party or affected therein or thereby.

(8) A grantee shall be subject to all other provisions of county ordinances, rules, regulations, and specifications heretofore or hereafter adopted, including, but not limited to, those pertaining to works and activities in, on, over, under and about roads. Any privilege claimed hereunder in any road or other public property shall be subordinate to any prior lawful occupancy of the road or other public property. A grantee shall also be subject to the provisions of general laws of the state of Washington, as now or hereafter amended, when applicable to the exercise of any privilege contained herein, including, but not limited to, those pertaining to works and activities in and about state highways.

(9) A grantee shall be prohibited from directly or indirectly doing any of the following:

(a) Imposing a fee or charge for any service or repair to grantee-owned receiving devices or equipment except for the repair of subscriber damage, the connection, disconnection, and reconnection of its service or for the determination by grantee of the quality of its signal to the recipients thereof.

(b) Soliciting, referring, or causing or permitting the solicitation or referral of any subscriber to persons engaged in any business herein prohibited to be engaged in by a grantee.

(c) Providing information concerning viewing patterns of identifiable individual subscribers to any group, person, or organization for any purpose.

(10) When not otherwise prescribed herein, all matters herein required to be filed with the county shall be filed with the Lewis County auditor.

(11) Before providing cable service to any subscriber, the grantee shall provide written notice to the subscriber substantially as follows:

“Subscriber is hereby notified that in providing cable communications service the grantee is making use of public right-of-way within Lewis County and that continued use of such right-of-way is in no way guaranteed. In the event the continued use of such rights-of-way is denied to the grantee for any reason, the grantee will make every reasonable effort to provide service, the subscriber agrees he will make no claim nor undertake any action against Lewis County, its officers, its elected official or its employees if the service to be provided hereunder is interrupted or discontinued.” [Ord. 1157, 1998; Ord. 1118 Art. V § 5.16, 1993]

Article VI. Penalties

5.10.370 Violation - Penalties.

Any person or public corporation which installs, operates, or maintains a cable system in the county without obtaining a franchise from the board in accordance with this chapter, or anyone who taps into or otherwise obtains the services of a properly franchised cable operator, shall be subject to the monetary penalties in LCC 1.20.020 and LCC 1.20.040. [Ord. 1180 §3, 2002; Ord. 1157, 1998; Ord. 1118 Art. VI § 6.01, 1993]

Chapter 5.15

MUSIC FESTIVALS

Sections:

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- 5.15.020 Definition.
- 5.15.030 Basic provision.
- 5.15.040 Qualification of applicant.
- 5.15.050 Application for permit.
- 5.15.060 Plan.
- 5.15.070 Requirements.
- 5.15.080 Permit fee.
- 5.15.090 Provisional permit.
- 5.15.100 Final approval.
- 5.15.110 Music festival permit.
- 5.15.120 General restrictions.
- 5.15.130 Revocation and cancellation.
- 5.15.140 Departure of patrons.
- 5.15.150 Posting.
- 5.15.160 Access to festival grounds.
- 5.15.170 Permit limitation.
- 5.15.180 Violation - Penalties.
- 5.15.190 Variances.

5.15.010 Preamble.

The board of county commissioners of Lewis County hereby declare that it is necessary for the protection of the health, welfare and safety of the people of Lewis County to enact under the police power of the county the following chapter providing for the licensing of music festivals as defined by this chapter and establishing the minimum health, sanitary, safety and police standards which are necessary to protect the general public and those persons attending such functions. [Ord. 1157, 1998; Ord. 1023 § 1, 1970]

5.15.020 Definition.

A “music festival” is any outdoor gathering of 500 or more people at which the principal activity is the presentation of music, whether live or recorded, which shall continue for more than four hours in any one

day, and which shall not be sponsored by a governmental body, or quasi-governmental body PROVIDED, That, pursuant to RCW 70.108.020, this definition shall not be applied to any regularly established permanent place of worship, stadium, athletic field, arena, auditorium, coliseum, or other similar permanently established places of assembly for assemblies which do not exceed by more than two hundred fifty people the maximum seating capacity of the structure where the assembly is held: PROVIDED, FURTHER, That this definition shall not apply to government sponsored fairs held on regularly established fairgrounds nor to assemblies required to be licensed under other laws or regulations of the state.[Ord. 1157, 1998; Ord. 1023 § 2, 1970]

5.15.030 Basic provision.

It shall be unlawful for any person, acting on behalf of himself or any other person, partnership, joint venture, corporation or other association to:

(1) Advertise or publicly promote a music festival at which 500 or more persons can be reasonably expected to attend without having first obtained a provisional music festival permit;

(2) Conduct a music festival or to allow a music festival to be conducted upon property within his control unless a music festival permit has been obtained.

In addition, it shall be unlawful for any person to knowingly attend a music festival that is being conducted without a permit. [Ord. 1157, 1998; Ord. 1023 § 3, 1970]

5.15.040 Qualification of applicant.

Any person over the age of 18 years, who has not been convicted of a felony crime within the last ten years involving moral turpitude, or the delivery, manufacture, use or possession of narcotics or dangerous drugs, may make application

for a music festival permit. [Ord. 1157, 1998; Ord. 1023 § 4, 1970]

5.15.050 Application for permit.

(1) An application for a permit to conduct a music festival shall be submitted to the clerk of the board of county commissioners upon forms to be provided by the board of county commissioners at least 90 days prior to the day scheduled to hold the festival, pursuant to RCW 70.108.040.

(2) In addition to any other information which may be requested by the board, or required under RCW 70.108.040, an application shall provide the following information, verified under oath:

(a) The name and address of the applicant, or in the event that the applicant is a partnership, joint venture, corporation, or other association, the names and addresses of all persons having an interest in the entity, together with a description of that interest;

(b) A description of the property upon which the festival is to be held, together with a verified statement from the property owner that he has consented to the holding of the festival;

(c) The date upon which the festival is to be held, the hours during which music is to be presented, and the number of patrons expected to attend; and

(d) A statement by the applicant that he will make every effort to comply with the laws of the state of Washington, ordinances of Lewis County, and those of any other governmental body having jurisdiction, and that he will also make a conscientious effort to ensure that the patrons of the festival shall also comply with these laws. [Ord. 1157, 1998; Ord. 1023 § 5, 1970]

5.15.060 Plan.

(1) At the time that an application shall be made for a permit to hold a music

festival, the applicant shall present to the board six copies of a plan containing a diagram of the festival grounds showing all physical facilities as they shall exist at the time of the festival, and a narrative statement clearly setting forth the means by which the applicant shall comply with all health, sanitary, safety and police requirements for music festivals.

(2) Upon receipt of the copies of the plan, the board shall immediately send a copy to the Department of Natural Resources, where applicable, and the chief of the Washington state patrol, through the director of fire protection or his designee, the fire district in which the festival is to be held, the Lewis County board of health the Lewis County sheriff, and any city or town which shall be in the vicinity of the festival site. [Ord. 1157, 1998; Ord. 1023 § 6, 1970]

5.15.070 Requirements.

A permit to conduct a music festival shall not be issued unless the applicant shall comply with the following requirements or has conclusively demonstrated his ability to comply therewith:

(1) Location. The outside perimeter of the festival grounds shall not be less than one thousand yards from any schoolhouse or church or 500 yards from any place of abode, commercial building, or farm building, unless the approval of the occupant has been obtained, pursuant to RCW 70.108.100.

(2) Sanitary Facilities. The applicant shall provide such toilet, water and garbage facilities, of the nature and type prescribed by law, as is necessary to promote the health, safety, and comfort of the patrons, but in no instance shall there be less than the following:

(a) Two toilets for every 100 persons in attendance;

(b) Five water outlets for drinking and washing for every 200 persons in attendance;

(c) Five garbage cans securely fixed in place for every 200 persons in attendance which shall be emptied at the conclusion of the festival in an authorized dump.

(3) Food Service. Any food which is dispensed upon the festival grounds shall be done in compliance with Lewis County board of health ordinances and shall in all respects be subject to the regulations of that agency and the state Department of Health.

(4) Fire Protection. The applicant shall provide such fire protection equipment of the nature and type prescribed by law that is necessary for the protection of the festival patrons and surrounding properties, but in no instance shall there be less than one fire truck with a minimum capacity of 1,000 gallons in standby readiness at all times upon the festival grounds, which shall be manned by firemen who are

(5) Ambulance Service. The applicant shall have a bona fide ambulance upon the festival grounds at all times, except when making emergency runs, which shall be manned by a person holding a current first aid certificate from the Red Cross or the state of Washington Department of Labor and Industries, qualified pursuant to the state law.

(6) Traffic and Crowd Control. The applicant shall provide the necessary personnel, equipment, and facilities to insure proper traffic control and crowd control. In doing so, the applicant shall seek the counsel and advice of the Lewis County sheriff, and obtain his approval of the proposed plan. In no instance, however, shall the applicant provide less than one qualified person for traffic and crowd control for every 200 persons expected to be in attendance, who shall remain on duty at all times that patrons occupy the festival grounds or are arriving or departing. These

control personnel shall meet one of the following requirements:

(a) Be presently serving as a deputy sheriff or city policeman;

(b) Be presently serving as a reserve deputy sheriff or auxiliary policeman, with one year of experience;

(c) Have had at least two years' experience as a regular deputy sheriff or city policeman within the last 10 years;

(d) Have had two years' experience as a reserve deputy sheriff or auxiliary city policeman within the past five years.

(7) Parking. The applicant shall provide an area adjacent to the festival grounds which shall be the only area where patrons' cars shall be parked, and which shall be large enough to accommodate one car for every three persons expected to attend. The parking area shall have a means of ingress and egress to the public highway which shall facilitate the prompt and orderly movement of traffic.

(8) Lighting. In the event that the presentation of music shall continue after sundown, the applicant shall provide for the illumination of the festival grounds and parking area to a minimum light intensity of 0.1 foot candles.

(9) Cash Bond. The applicant shall deposit with the treasurer of Lewis County a cash bond in the amount as set forth below to save and protect the streets, pavements, bridges, road signs and other properties from all damage that might occur as a result of holding the festival, which monies shall be used to compensate the county for any damage which it sustains. In addition, these monies shall be used to restore the festival grounds to a sanitary condition, if necessary, and to reimburse the county for any unusual law enforcement expenses which might incur:

500 to 10,000 persons \$5,000 cash bond
10,000 to 20,000 persons \$7,500 cash bond
20,000 to 30,000 persons \$10,000 cash bond

\$2,500 for each additional 10,000 persons
expected

(10) Insurance. The applicant shall secure liability insurance providing for a minimum of \$100,000 bodily injury coverage per person; \$300,000 bodily injury coverage per occurrence, and \$100,000 property damage, which policy shall name Lewis County as an additional insured. [Ord. 1157, 1998; Ord. 1023 § 7, 1970]

5.15.080 Permit fee.

The application to conduct a music festival shall be accompanied by a permit fee as set forth in RCW 70.108.040, which shall be in the form of a certified or cashier's check. In the event that the permit is not issued, or in the event that the permit is canceled or revoked for reasons beyond the control of the applicant, then the permit fee shall be returned to the applicant. [Ord. 1157, 1998; Ord. 1023 § 8, 1970]

5.15.090 Provisional permit.

(1) After the submission of an application, together with the proposed plan and permit fee, the applicant shall appear before the board of county commissioners at its regular weekly meeting held in the second week following the submission of the application.

(2) At this meeting, the board shall advise the applicant as to whether or not his plan is acceptable, and if not, what corrections need to be made. In the event that the plan is approved by the board, a provisional music festival permit shall be issued to the applicant. In the event, however, that the plan is not acceptable, the applicant shall be given the further opportunity to appear before the board to present modifications to the original plan

that would correct its deficiencies. If requested by the applicant, the board shall specify in writing the deficiencies of the applicant's plan. [Ord. 1157, 1998; Ord. 1023 § 9, 1970]

5.15.100 Final approval.

(1) Not less than three days before the date of the festival, all physical facilities as provided for in the approved plan shall be fully constructed and installed, and the festival grounds shall at that time be inspected by the board, or by the county engineer who may act upon its behalf in making the inspection, to determine if the facilities are in conformity with the plan.

(2) At the same time or sooner, the applicant shall provide satisfactory evidence to the board that he has provided for the stationing of a properly manned fire truck and an ambulance upon the festival grounds, and that he has obtained the services of qualified traffic and crowd control personnel. Signed contracts of employment shall be deemed to constitute satisfactory evidence. If the physical facilities are in conformity with the plan, and if satisfactory evidence is presented as to providing for a fire truck and ambulance, and personnel to control the traffic and crowds, then the applicant shall be entitled to receive from the board a music festival permit, upon his tendering the cash bond and the insurance policy as provided in this chapter. In the event, however, that the board finds that the applicant has not complied with the requirement for holding the music festival, it shall immediately advise the applicant in the most expeditious manner of the deficiency. If requested by the applicant, the board shall specify the deficiency in writing. A music festival permit shall not be issued until all deficiencies are corrected. [Ord. 1157, 1998; Ord. 1023 § 10, 1970]

5.15.110 Music festival permit.

A music festival permit shall authorize the holder to conduct a music festival upon the date specified in the permit and upon the property described in the holder's application. [Ord. 1157, 1998; Ord. 1023 § 11, 1970]

5.15.120 General restrictions.

The conduct of the music festival shall be subject to the following general restrictions:

(1) Hours. Music may be only presented between the hours of 8:00 a.m. and sundown, unless there has been compliance with the lighting requirements, in which instance music may be presented until 10:30 p.m.

(2) Admittance. The number of patrons attending the festival shall be limited to the number prescribed in the approved plan. The patrons of the festival shall not be permitted upon the grounds until 6:00 a.m. and shall be directed to vacate the premises upon the conclusion of the musical presentation.

(3) Intoxicants. The possession and consumption of alcoholic beverages upon the festival grounds shall be prohibited. [Ord. 1157, 1998; Ord. 1023 § 12, 1970]

5.15.130 Revocation and cancellation.

A music festival permit shall be issued solely for the purpose of preserving the public peace, health, safety, morals, and welfare of the people of Lewis County, and therefore as a condition of its issuance, shall be subject to being summarily revoked by the order of the board of county commissioners issued at a private meeting without notice, if cause shall exist for its revocation. It shall be presumed that such cause does exist if:

(1) It appears that 20 percent more people than provided for in the approved plan shall be seeking admission to the festival;

(2) It appears that general disorder, or violence or destruction of property may occur;

(3) There is an open and notorious use of intoxicants, or illegal drugs and narcotics which cannot be satisfactorily handled by police officers on an individual basis;

(4) There is conduct involving disorderly or unlawful acts or commission any nuisance which cannot be handled by police officers on an individual basis;

(5) There is a gross failure upon the part of the permit holder to comply with the requirements for holding music festivals. In the event of the revocation or cancellation of a permit the holder shall be entitled to a hearing before the board at the earliest opportunity that such a hearing may be held. [Ord. 1157, 1998; Ord. 1023 § 13, 1970]

5.15.140 Departure of patrons.

At the conclusion of the festival, or at such time as the music festival permit may be canceled or revoked, the permit holder shall immediately take all reasonable measures to require the departure of all patrons from the festival grounds. [Ord. 1157, 1998; Ord. 1023 § 14, 1970]

5.15.150 Posting.

During the festival, the music festival permit shall be posted in a safe but conspicuous place on the festival grounds. [Ord. 1157, 1998; Ord. 1023 § 15, 1970]

5.15.160 Access to festival grounds.

The holder of a music festival permit shall allow free access to the festival grounds to police officers, health officers, fire protection district officers, and any other public officer who is present in his official capacity for the purpose of law enforcement. [Ord. 1157, 1998; Ord. 1023 § 16, 1970]

5.15.170 Permit limitation.

A music festival permit shall not be issued to the same applicant, nor for a festival to be held in substantially the same area, for two consecutive days. [Ord. 1157, 1998; Ord. 1023 § 17, 1970]

5.15.180 Violation - Penalties.

Any person who shall willfully violate the provisions of this chapter, or any permit holder who shall willfully fail to comply with the requirements of this chapter, shall be subject to the penalties in LCC 1.20.020 and LCC 1.20.040. [Ord. 1180 §4, 2002; Ord. 1157, 1998; Ord. 1023 § 18, 1970]

5.15.190 Variances.

To the extent, if any, that it may be conformable with the law, the board of county commissioners may grant a variance from any requirements of this chapter, if to do so would not in any way endanger the health, safety or welfare of those persons to be protected. [Ord. 1157, 1998; Ord. 1023 § 19, 1970]